

<b>COMPLIANCE BOARD OPINION NO. 03-5</b>
--

May 7, 2003

*Mr. Douglas Tallman  
City Editor  
The Frederick News-Post*

The Open Meetings Compliance Board has considered your complaint that what you characterized as a private “mediation session” on March 6, 2003, involving the Mayor of Frederick and five members of the Frederick Board of Aldermen, may have violated the Open Meetings Act. For the reasons stated below, the Compliance Board finds that there was no violation.

**I**

**Complaint and Response**

The complaint indicated that, for more than a year, the Mayor and Alderman have had “difficulties ... in getting along. Many times, the elected leaders portrayed their difficulties as differences over policy issues.” According to the complaint, the gathering in question “mediation session” to try to resolve these difficulties. The differences between the Mayor and the Aldermen, the complaint continued, “are based on policies, not personalities.” Hence, the March 6 session, and others like it planned for the future, “almost assuredly will have to discuss the public’s business ... . In fact, the members did say specific matters of the public’s business were discussed [at the March 6 session]. They recollect that at those times someone changed the subject. If their recollections were in error, however, the public has no recourse. Not only was the public’s business discussed, we contend that the ability (or inability) of the mayor and aldermen to conduct the public’s business is of grave concern to the citizens of Frederick.”

In a timely response on behalf of the City, Heather Price Smith, Esquire, Chief Legal Services Officer, denied that the Act was violated at the March 6 session. The response argued that the session was not a “meeting,” within the meaning of the Open Meetings Act, because it was limited to a process for improving interpersonal relations and did not involve the conduct or discussion of public business.

Although Ms. Smith herself was not present on March 6, her response included a letter from Catherine Cullen Palmisano, Executive Director of CALM,

a private organization that offers mediation and community conferencing services in Frederick City and County. Ms. Palmisano's letter explained that the March 6 session did not involve a mediation process, which CALM often uses to try to resolve disputes about specific issues. Instead, the March 6 session involved "community conferencing," used when a group of five or more participants "have a need to resolve a conflict/dispute due to communication issues, personality differences and behaviors that affect more than just the one individual. ... A trained community conferencing facilitator offers the group an opportunity to come together to discuss these issues and resolve them through asking a specific set of questions" related to the actions and behaviors. Ms. Palmisano reported that in interviews prior to the community conference, "none of the participants identified specific 'city' issues as the source of the major confrontations transpiring in public meetings." Furthermore, with respect to what actually occurred on March 6, Ms. Palmisano stated unequivocally: "Specific City policies and/or business were not part of this community conferencing process."

## II

### Analysis

Even if a quorum of a public body gathers together, the Open Meetings Act does not apply unless the quorum is "convene[d] ... for the consideration or transaction of public business." §10-502(g) of the State Government Article, Maryland Code.<sup>1</sup> Moreover, the Act does not apply to "a chance encounter, social gathering, or other occasion that is not intended to circumvent [the Act]." §10-503(a)(2).

It is a truism that public bodies vary substantially in the effectiveness with which they conduct public business. Personality clashes among members can be a serious impediment to effective meetings. Consequently, efforts to improve interpersonal relations among members of a public body relate importantly to the effectiveness with which the public business is conducted.

It does not follow, however, that an effort to improve interpersonal relations is itself "the consideration or transaction of public business" resulting in the application of the Open Meetings Act to such an effort. Although the quoted phrase is not defined in the Act, the General Assembly's statement of legislative policy that introduces the Act suggests that "the consideration or transaction of public business" is synonymous with "the performance of public officials" in relation to "the deliberations and decisions that the making of public policy involves." §10-501(a)(2). The personal habits and behaviors that might improve an official's

---

<sup>1</sup> All statutory references in this opinion are to the State Government Article.

performance are not themselves part of the governmental process thus described by the General Assembly. *See* 80 *Opinions of the Maryland Attorney General* 241 (1995) (adopting similar analysis of St. Mary's County open meetings law).

The issue presented by this complaint is strikingly similar to that addressed by a Missouri appellate court in *Kansas City Star Co. v. Fulson*, 859 S.W.2d 934 (Mo. App. 1993). That case involved the Kansas City School Board, which "had experienced difficulties functioning effectively as a decision-making body due to personality differences." 859 S.W.2d at 936. To try to surmount these difficulties, school board members attended a weekend workshop conducted by a psychologist. "During the workshop, [the school board members] participated in role-playing, examined their behavior as a group and discussed ways to improve the Board's communication and teamwork." 859 S.W.2d at 937.

When this gathering was challenged as a violation of the Missouri open meetings law, the court considered whether the workshop was a "public meeting" under that law. Such a meeting was defined as one "at which any public business is discussed, decided, or public policy formulated." 859 S.W.2d at 939. The Missouri court held that this definition did not extend to the workshop. Although reporters and others would undoubtedly have an interest in watching the board members' efforts at improving interpersonal skills, "matters of public business are not synonymous with matters of public interest. Public business encompasses those matters over which the public governmental body has supervision, control, jurisdiction or advisory power. Activities to improve the personal relations of individuals who serve together on a public governmental body, if limited to the issues of social interaction, are not matters of public business." 859 S.W.2d at 940-41. The court went on to observe that the communication skills imparted at the workshop "are common sense concepts germane to any gathering of individuals and do not have any particular application to board business. As a matter of law, it was not public business for the Board to discuss the betterment of interpersonal relationships in the context of a workshop when the discussions of interpersonal relationships did not include reference to any business matters which would come before the Board for consideration and action." 859 S.W.2d at 941.

We find this reasoning convincing and adopt it in our interpretation of the Maryland Open Meetings Act. *See* Compliance Board Opinion 01-10 (June 21, 2001). Ms. Palmisano's letter confirms that matters of City public business were not discussed at the March 6 community conference. Consequently, the March 6 gathering was not a "meeting" for purposes of the Open Meetings Act.

**III**

**Conclusion**

In summary, the Open Meetings Compliance Board finds that the Mayor and Aldermen of the City of Frederick did not violate the Open Meetings Act in connection with their community conference held on March 6, 2003.

OPEN MEETINGS COMPLIANCE BOARD

*Walter Sondheim, Jr.*  
*Courtney McKeldin*  
*Tyler G. Webb*